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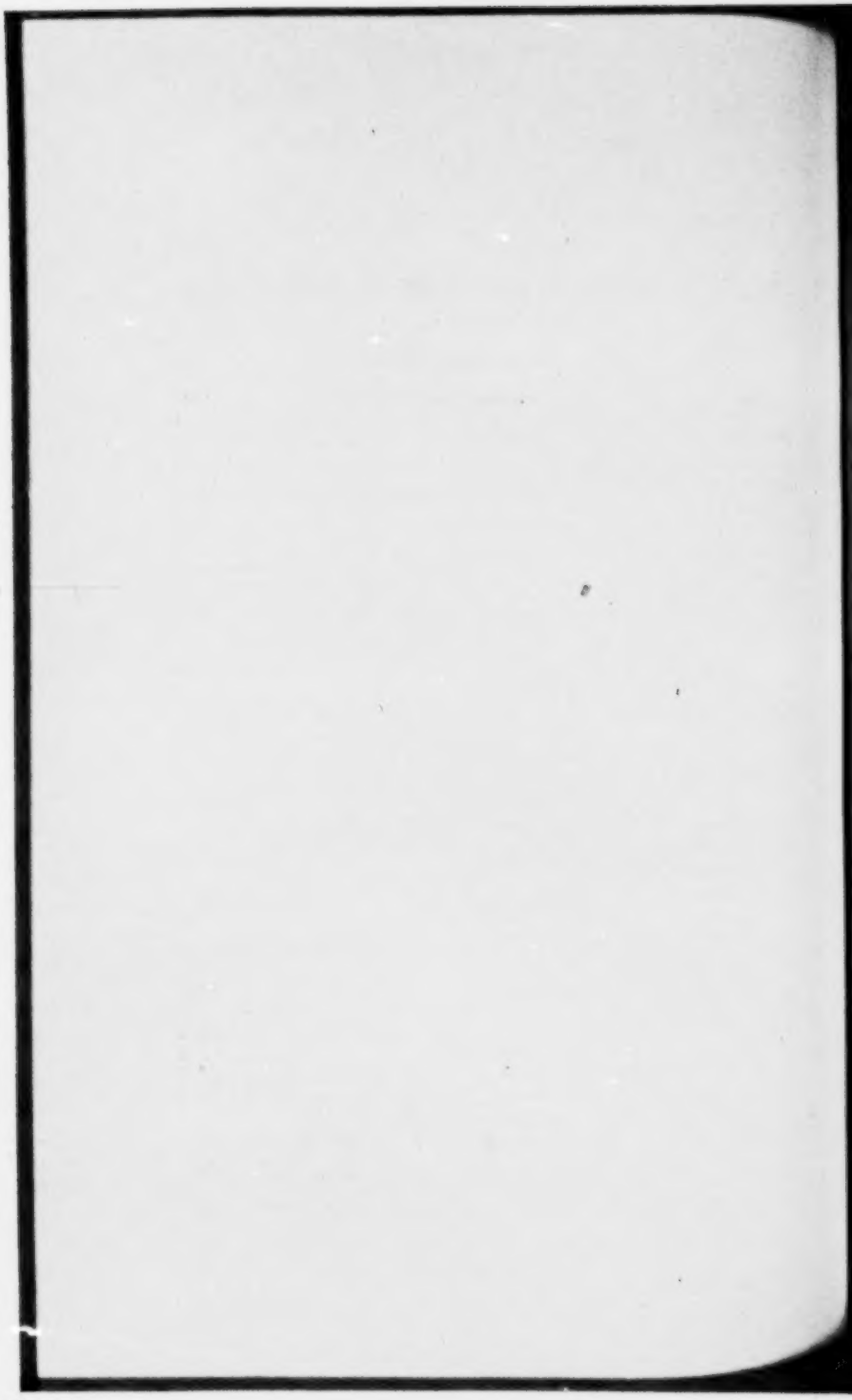

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 552

STATE OF FLORIDA, EX REL. CARROLL DUNSCOMBE, PETITIONER

v.

HONORABLE A. O. KANNER, AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Supreme Court of Florida has not issued an opinion, and the order of the court (R. 8) has not been reported.

JURISDICTION

The order of the court below was entered on November 17, 1947 (R. 8). A petition for rehearing was denied on November 24, 1947 (R. 10). The petition for a writ of certiorari was filed on January 28, 1948. The jurisdiction of

this Court is invoked under section 237 (b) of the Judicial Code, as amended (28 U. S. C. 344 (b)).

QUESTION PRESENTED

Whether an order of the Supreme Court of Florida denying a petition for a writ of prohibition is reviewable by this Court, where the order was not accompanied by an opinion and could have been based upon a controlling, non-Federal requirement of local practice.

STATUTES AND ORDERS INVOLVED

The State statutes involved are Title 6, Florida Statutes Annotated, sections 80.05 through 80.12, which govern the practice and procedure to be followed in the courts of Florida in prohibition proceedings (relevant portions of the statute are set forth in the Appendix, pages 9–10); section 58.01, Florida Statutes of 1941, which requires a non-resident plaintiff to file a cost bond in order to maintain an action in a State court; and chapter 613, Florida Statutes of 1941, which prescribes the requirements for doing business in the State by foreign corporations.

The Federal statute and orders involved are Title 12, United States Code, sections 1148–1148d (47 Stat. 713; 48 Stat. 273; 50 Stat. 704, 710, 717), which provide for the creation of Regional Agricultural Credit Corporations; Executive Order No. 6084 dated March 27, 1933 (preceding 12 U. S. C. 636), which vested control over such corporations in the Farm Credit Administration;

and Order No. 202 of the Farm Credit Administration dated September 30, 1937, which created the Regional Agricultural Credit Corporation of Washington, D. C. (relevant portions of the order are set forth in the Appendix, pages 10–13).

STATEMENT

This action was commenced by the petitioner in the Supreme Court of Florida by a petition for a writ of prohibition forbidding the respondent, as Judge of the Circuit Court of Martin County, Florida, from entertaining further an action at law now pending before him (R. 1–2).

The action at law pending before the Circuit Court of Martin County, Florida, was commenced by the Regional Agricultural Credit Corporation of Washington, D. C., to collect from the petitioner an indebtedness evidenced by a promissory note (R. 3–5). The Regional Agricultural Credit Corporation of Washington, D. C., is a wholly Federally-owned corporation chartered by the Farm Credit Administration (Order No. 202, dated September 30, 1937, Appendix, pages 10–13), pursuant to the provisions of 12 U. S. C. 1148–1148d, for the purpose of making loans to farmers and stockmen. The petitioner filed a demurrer and several motions to dismiss the action on the grounds: (1) That the Regional Agricultural Credit Corporation of Washington, D. C., does not have corporate authority to sue, and (2) that the Regional Agricultural Credit Corporation of

Washington, D. C., is not authorized to maintain the action in the State court because it has not filed the cost bond required of non-resident plaintiffs by section 58.01, Florida Statutes of 1941, and has not met the requirements for doing business in Florida required of foreign corporations by chapter 613, Florida Statutes of 1941. The respondent judge denied the motions, overruled the demurrer, and allowed the petitioner the customary time within which to file his pleas. (R. 6–8.)

The petitioner thereupon commenced this action by petitioning the Supreme Court of Florida to issue a rule nisi, directed to the respondent in his capacity as Judge of the Circuit Court for Martin County, Florida, requiring him to show cause why a writ of prohibition should not issue. The respondent, through counsel, resisted the petition upon the ground that the petitioner had not made out a prima facie case. The Supreme Court of Florida denied the petition and later denied a petition for rehearing (R. 8, 10).

As the court refused to issue a rule nisi, the respondent was not required to file a return in that court and the ground upon which the petition for the writ of prohibition was successfully resisted does not appear in the record. Furthermore, the court's orders were entered without opinion and the grounds upon which the court based its refusal to grant the petition likewise do not appear in the record.

ARGUMENT

Since the order of the Supreme Court of Florida denying the petition for a writ of prohibition was not accompanied by an opinion, it is impossible to determine from the record the basis for the court's action. The order could have been based solely upon the requirements of local practice in prohibition proceedings, independently of any Federal question in the case. In such circumstances, it is clear that this Court will not take jurisdiction. *Cuyahoga River Power Company* v. *Northern Realty Company,* 244 U. S. 300; *Allen* v. *Arguimbau,* 198 U. S. 149.

The practice in prohibition proceedings in the Florida courts is prescribed by statute. After providing for the filing of a suggestion for prohibition, stating the nature of the case and describing the proceedings in the inferior court sought to be prohibited, the Florida statute states that the court shall, if it finds that a prima facie case has been made, grant a rule directed to the lower court and to the adverse parties in the suit therein pending to show cause why the writ should not issue. Under the decisions of the Supreme Court of Florida, a writ of prohibition is never granted as a matter of right, but is an extraordinary judicial process employed to restrain the unlawful exercise of judicial functions in the absence of an adequate remedy at law. *Burkhart* v. *Circuit Court of Eleventh Judicial Circuit,* 146 Fla. 457, 1 So. 2d 872. The writ is

restricted to the field for which it was intended and is not allowed to become a vehicle for the determination of questions involving the correct or incorrect decision of a lower court that had authority to act in the premises. *Adams* v. *Lewis,* 146 Fla. 177, 200 So. 852. Its proper function is to confine lower courts, in the exercise of their powers, within the limits fixed by law, and is not allowed to usurp the office of a writ of error or an appeal. *State ex rel. Rheinauer* v. *Malone,* 40 Fla. 129, 23 So. 575; *Crill* v. *State Road Department,* 96 Fla. 110, 117 So. 795. A distinction is recognized between the assumption of a jurisdiction to which the court has no legal claim, and the mere erroneous exercise of a jurisdiction with which the court is vested, *Burkhart* v. *Circuit Court of Eleventh Judicial Circuit, supra;* and where the lower court had authority to decide the matter in dispute, a writ of prohibition will not lie even though the decision of the lower court may have been erroneous. *State ex rel. Park* v. *H. T. Poindexter & Sons Merchandising Company,* 149 Fla. 765, 7 So. 2d 452; *State ex rel. Schwarz* v. *Heffernan,* 142 Fla. 137, 194 So. 313.

A petition for a writ of prohibition was presented to the Supreme Court of Florida in its original jurisdiction in *State ex rel. Lynch* v. *Circuit Court of Eleventh Judicial Circuit in and for Dade County,* 118 Fla. 507, 159 So. 883, to require the lower court to dismiss a proceeding brought by the Eastern Hotel Corporation. The petition was

based upon the fact that the corporation had failed to comply with the statutes of Florida requiring the filing of an annual report with the Secretary of State and the payment of an annual excise tax. The lower court had denied the motion to dismiss for that reason. In dismissing the petition for writ of prohibition, the Supreme Court of Florida said:

> As the court had jurisdiction to determine the motion to dismiss the action for failure of the plaintiff corporation to comply with the statute and as the motion affected not the jurisdiction of the court to proceed further in the cause but the right of the plaintiff corporation to maintain the action because of its failure to comply with the statute, the writ of prohibition is not the proper remedy. If the court erred in denying the motion, a remedy is by writ of error to a final judgment in the cause.

The rule stated in the *Lynch* case is applicable to the facts in the present proceeding, and provides an adequate non-Federal basis for the court's order. No contention was made in the Supreme Court of Florida, and none is made here, that the Circuit Court of Martin County, Florida, lacked jurisdiction to hear and determine the matter upon which it passed. The sole objection is that it determined the matter incorrectly. The proper remedy under the Florida decisions is by appeal in the pending action at law.

The petitioner asserts (Pet. 5) that the Supreme Court of Florida held that, because of its status as a Federal instrumentality, the Regional Agricultural Credit Corporation of Washington, D. C., is not a foreign corporation, is not required to qualify to do business in the State before using the State courts, is not required to file a cost bond required of non-resident plaintiffs, and is immune from State taxation. The difficulty, however, is that the Supreme Court of Florida made no finding with respect to the Federal issues stated by the petitioner, and its order can be fully sustained on the basis of the Florida practice in prohibition proceedings.

CONCLUSION

The decision sought to be reviewed can rest on an adequate non-Federal ground. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

JAMES A. DOYLE,
Associate Solicitor,

LEWIS A. SIGLER,
Assistant Associate Solicitor,
Department of Agriculture,

ARTHUR W. HOLLER, JR.,
Assistant General Counsel,
Farm Credit Administration of
Columbia, S. C.

FEBRUARY 1948.

APPENDIX

Chapter 3002, Section 2, Florida Laws of 1877, as amended, codified as Title 6, Florida Statutes Annotated, sections 80.05 through 80.12:

80.05 *Prohibition; practice and proceedings.*—The practice in the courts of this state having jurisdiction to issue writs of prohibition shall be as set forth in §§ 80.06–80.12.

80.06 *Suggestion for prohibition.*—The plaintiff or plaintiffs shall file a suggestion stating the nature of the case, and the proceedings in the inferior court, tribunal or body presuming to exercise jurisdiction, sought to be prohibited, concluding with a prayer for judgment, and that the state's writ of prohibition may be granted in that behalf. When the matters suggested appear upon the face of the proceedings in the inferior court, then the transcript of the record of all the proceedings in the case, duly certified, shall accompany the suggestion, and where the matters suggested are not matters of record, then the truth thereof shall be verified by affidavit of the party instituting the proceedings or of his agent, or attorney at law, or in fact.

80.07 *Prohibition; rule nisi; issuance; service; etc.*—Upon the filing of the suggestion, the court, if in its judgment a prima facie case is made, shall grant a rule directed to the inferior court and to the parties plaintiff in the suit therein pending to show cause why the writ of prohibition should not issue as prayed for. Such rule

shall be a supersedeas, and shall be served upon the inferior court and the parties to whom it is directed at such time as the court may direct, and an answer or return shall be made thereto by the inferior court and the parties at the time prescribed in the rule. In case of failure to make such answer or return, it may be enforced by attachment for contempt.

SEPTEMBER 30, 1937.

FARM CREDIT ADMINISTRATION ORDER NO. 202

Subject: Consolidation of Regional Agricultural Credit Corporations of Albany, New York; Baltimore, Maryland; Raleigh, North Carolina; Columbus, Ohio; Jackson, Mississippi; and St. Louis, Missouri; Grant of Charter to Regional Agricultural Credit Corporation of Washington, D. C.

WHEREAS, authority is vested in the Farm Credit Administration by the Farm Credit Act of 1937 to order and effect the consolidation of two or more regional agricultural credit corporations on such terms and conditions as it shall direct and to grant charters to, prescribe bylaws for, and fix the capital of regional agricultural credit corporations which may be formed by such consolidations; and

WHEREAS, I, as Governor of the Farm Credit Administration, have found that the consolidation of the following named regional agricultural credit corporations (hereinafter called the "constituent corporations"):

Regional Agricultural Credit Corporation of Albany, Albany, New York.

Regional Agricultural Credit Corporation of Baltimore, Baltimore, Maryland.

Regional Agricultural Credit Corporation of Raleigh, Raleigh, North Carolina.

Regional Agricultural Credit Corporation of Columbus, Columbus, Ohio.

Regional Agricultural Credit Corporation of Jackson, Jackson, Mississippi.

Regional Agricultural Credit Corporation of St. Louis, St. Louis, Missouri.

into one corporation will effect a more efficient and economical administration of the business heretofore conducted by such constituent corporations,

NOW, THEREFORE, it is hereby ordered:

1. That the constituent corporations be and they hereby are consolidated into one corporation to be known as the "Regional Agricultural Credit Corporation of Washington, D. C.", which shall have all the rights, powers, authority and exemptions, shall be subject to the same supervision and control, and shall have its expenses paid in the same manner as provided by law in respect to the constituent corporations.

2. That there be and hereby is granted to the Regional Agricultural Credit Corporation of Washington, D. C., the following charter:

CHARTER OF THE REGIONAL AGRICULTURAL CREDIT CORPORATION OF WASHINGTON, D. C.

"1. The name of this corporation shall be 'Regional Agricultural Credit Corporation of Washington, D. C.' and its principal office shall be in the City of Washington, District of Columbia.

"2. The authorized capital of the said corporation shall be Fifteen Million Dollars

($15,000,000), of which the amount initially issued shall be $250,000. The authorized capital and/or the amount thereof outstanding may be increased or decreased from time to time by the Governor of the Farm Credit Administration.

"3. The corporation, formed by the consolidation of the Regional Agricultural Credit Corporations of Albany, Albany, New York, of Baltimore, Baltimore, Maryland, of Raleigh, Raleigh, North Carolina, of Columbus, Columbus, Ohio, of Jackson, Jackson, Mississippi, and of St. Louis, St. Louis, Missouri, is authorized and empowered to have and exercise all the rights, powers, authority, and exemptions and to do and perform all acts and transact all business which legally may be had or done by regional agricultural credit corporations under and in accordance with the Emergency Relief and Construction Act of 1932, approved July 21, 1932, the Farm Credit Act of 1933, approved June 16, 1933, and the Farm Credit Act of 1937, approved August 19, 1937, as they exist or may be amended.

"4. Without in any wise limiting the generality of the foregoing, the corporation shall have power

(a) to acquire and dispose of such property, real and personal, as may be necessary or convenient for the transaction of its business, which, however, may be leased to others for revenue purposes,

(b) to adopt and use a corporate seal.

"5. The corporation shall be managed by officers and agents appointed by the Farm Credit Administration under such rules and regulations and in accordance with such bylaws as the Farm Credit Administration may from time to time prescribe.

"6. This charter may be amended from time to time by the Farm Credit Administration.

"IN WITNESS WHEREOF, I, W. I. Myers, Governor of the Farm Credit Administration have hereunto set my hand and caused the seal of the Farm Credit Administration to be affixed this 30th day of September, 1937.

"W. I. MYERS,
"Governor of the Farm Credit Administration.

"ATTEST:
"[SEAL] W. S. HINMAN,
"Chief Clerk."

* * * * *

The provisions of this order shall be effective as of the close of business on the date first above written and shall remain in full force and effect until amended or revoked by subsequent order.

W. I. MYERS,
Governor, Farm Credit Administration.

U. S. GOVERNMENT PRINTING OFFICE: 1943